

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 735 OF 1996**

**THE REPUBLIC
VERSUS
PATRICK KAPACHIKA BANDA**

In the Second Grade Magistrate Court sitting at Liwonde Criminal Case No 332 of 1996

CORAM: Mwaungulu, J

Manyungwa, State Advocate, for the State

Defendant, present, unrepresented

Ngwata, Official Interpreter

Marseni, Official Recorder

Mwaungulu, J

JUDGMENT

This case was set down by the Honourable Mr. Justice Tambala. The Reviewing judge thought that the sentence passed by the lower court should be enhanced. The defendant was sentenced respectively to twelve and six months for burglary and theft. It is obvious to me that the reviewing judge was concerned with the sentence on the burglary charge.

When the defendant appeared before the Second Grade Magistrate at Liwonde, he pleaded guilty to counts of burglary and theft. The offences are against sections 309 and 278 of the Penal Code, respectively. On the night of 13th and 14th of July 1996, the complainant's wife was woken up by intruders. The intruders did not get inside. They pushed a window and a door open. They were hooking clothes from the bedroom. The complainant woke up. The defendant was arrested there and then. The property was recovered. The defendant admitted the offence at the police.

The lower court gave no reasons for the sentence it imposed. This is not proper. A sentencer should always give reasons for the sentence he is imposing. Sentencing is exercise of a discretion across the range of a sentence prescribed by the Legislature. The exercise of the discretion is reviewable both as regards the actual sentence passed and the reasons for it. The discretion, like any other, should be exercised judicially. The Court exercising the discretion must consider all

the circumstances before it and the law on the matter. It is a wrong exercise of the discretion to overlook or de-emphasize a material factor. The court reviewing the exercise of the discretion will interfere with a wrong exercise of the discretion. It is very important, therefore, that a sentencing court should give reasons for the sentences it is imposing. Moreover the beneficiaries of our penal policy are entitled to know why and how a sentence has been arrived at. The victims of the crime will be appeased by the reasons and can walk tall in the firm understanding that the felon has received deserved justice. Equally, the public, which funds the criminal system to curb crime, are entitled to know how and why a certain approach was preferred. Ultimately, the reasons advanced by the court may be the better lessons to the offender and others who are on the doorstep of entering a life of crime.

In relation to the offence of burglary, it is clear that the court below is oblivious to the trend that this court is setting for this crime. Offences of burglary and housebreaking deserve long and immediate imprisonment. The offences are punishable with death or life imprisonment. They therefore belong to a group of offences regarded very seriously under our criminal law. Besides, in spite their seriousness, they are very commonplace, if the records of the courts are anything to go by. The two offences with the related offence of theft result in many millions of kwacha of loss of property in the country each year. Households spend an equivalent amount for insurance and security. The offences are a desecration of the home. It is for these reasons and others that this court is now recommending long and immediate imprisonment for these offences.

In *Republic v Chizumila*, (1994) Conf. Cas. No 316, this court said that the starting point for burglary should be six years imprisonment with hard labour. The sentence should be scaled upwards or downwards to reflect mitigating and aggravating factors. Always this will involve a consideration of the extent and the circumstances in which the crime was committed, the personal circumstances of the defendant, the impact of the crime on the victim and the public interest in prevention of crime. For burglary the legislature directed its mind to trespass with intent to commit a crime. The extent of the trespass will have a bearing on the sentence actually passed. Where therefore there has been substantial damage to the premises or property in breaking and gaining entry, the sentence will be enhanced. Equally, where the victims were disturbed or injured, the court will regard that. Then there will be a host of other considerations that reflect a disposition beyond the ordinary mental requirement for commission of a crime, such as meticulous planning or that more than one person was involved in the execution of the criminal design. All these, and the list is not exhaustive, are the sort of things that the sentencer has to look at when dealing with an offender.

Here, on the burglary count, I and Mr. Manyungwa agree with the criticism of the reviewing judge of the sentence of the court below. In favour of the defendant were his age, that he is a first offender and his plea of guilty. Against this was that more than one person was involved and the occupants were actually disturbed. The trespass was not very extensive. The appropriate sentence in the matter is three years imprisonment with hard labour. I set aside the sentence of one year imprisonment with hard labour on the burglary count. The defendant will serve a sentence of three years imprisonment with hard labour. The sentences will run concurrently as was ordered by the court below.

Made in open court this 1st Day of April 1997.

D.F. Mwaungulu
JUDGE